

**Letter of Findings Number: 04-20140199
Sales and Use Tax
For Tax Years 2010-12**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register.

ISSUE

I. Use Tax—Imposition.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-8.1-5-1; [45 IAC 2.2-3-4](#).

Taxpayer protests assessment of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana corporation. As the result of an audit, the Indiana Department of Revenue ("Department") determined that during the tax years 2010, 2011, and 2012, Taxpayer had not paid sales tax at the time of purchase on certain items subject to tax. The Department therefore issued proposed assessments for use tax, penalties, and interest. Taxpayer protested the imposition of use tax on certain items. An administrative hearing was held and this Letter of Findings results. Further facts will be supplied as required.

I. Use Tax—Imposition.

DISCUSSION

Taxpayer protests the imposition of use tax on certain items listed as taxable in the Department's use tax calculations for the tax years 2010-12. The Department based its calculations on its review of Taxpayer's records. Taxpayer states that some purchases listed as occurring in January 2010 were actually purchased in December 2009 and that tax was paid on those purchases at the time of the transactions. Therefore, Taxpayer argues, no use tax is due on those transactions for 2010. Also, Taxpayer protests that some purchases were entered with the incorrect purchase price in the Department's use tax calculations. The Department notes that the burden of proving a proposed assessment wrong rests with the person against whom the proposed assessment is made, as provided by IC § 6-8.1-5-1(c).

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

Use tax is imposed under IC § 6-2.5-3-2(a), which states:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

[45 IAC 2.2-3-4](#) further explains:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Therefore, when tangible personal property is used, stored, or consumed in Indiana, use tax is due unless sales

tax was paid at the time of the transaction, or if there is an applicable exemption to sales and use taxes.

Taxpayer's first point of protest is in regards to four purchases listed as taxable in 2010. The first purchase was office furniture, which Taxpayer explains was purchased in December, 2009, not in January, 2010. Taxpayer provided an invoice which establishes that this purchase occurred prior to the audit period. For the other three purchases in dispute for 2010, Taxpayer provided invoices which show that sales tax was paid at the time of purchase. As provided by [45 IAC 2.2-3-4](#), use tax is due unless sales tax was paid at the time of purchase. Since sales tax was paid at the time of purchase, use tax is not due. Therefore, Taxpayer has met the burden of proving the proposed assessments of use tax wrong regarding these four items listed as taxable in 2010.

Taxpayer's second point of protest is in regards to five purchases in 2011 and one purchase in 2012 which Taxpayer believes were listed in the incorrect amounts in the Department's use tax calculations. Taxpayer has provided invoices which show the amounts charged for the six purchases in question. The Department will conduct a supplemental audit to verify the amounts of the six transactions.

Taxpayer's third point of protest is in regards to a rental in 2012. Taxpayer protests that the rental was for equipment rented from an out-of-state vendor and that the equipment was used on a job in the other state. Taxpayer provided documentation establishing that the equipment in question never entered Indiana. As provided by IC § 6-2.5-3-2(a), Indiana use tax is imposed on the use, storage, or consumption of tangible personal property in Indiana. In this case, Taxpayer has established that the tangible personal property was not used, stored, or consumed in Indiana, therefore Indiana use tax is not due on this transaction.

In conclusion, Taxpayer has met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessments wrong with regards to the four items in dispute for 2010 and the rental of equipment in 2012 since the equipment did not enter Indiana. Taxpayer is sustained with regards to the six items purchased in 2011 and 2012 subject to audit verification. The Department will conduct a supplemental audit to verify the amounts entered.

FINDING

Taxpayer's protest is sustained, as provided above.

Posted: 07/30/2014 by Legislative Services Agency
An [html](#) version of this document.